

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 02, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

MARK ALLEN PLEASANT; and
TRALEN ROBERT DOLER,

Plaintiff,

v.

SPOKANE CIVIC THEATRE;
SPOKANE CHILDREN'S THEATRE;
and DOES 1-10,

Defendants.

No. 2:22-cv-00269-MKD

ORDER GRANTING STIPULATED
PROTECTIVE ORDER

ECF No. 29

Before the Court is the parties' Stipulation for Entry of Protective Order, ECF No. 29. The Court finds good cause under Fed. R. Civ. P. 26(c) to issue an order to prevent certain categories of information produced by a party in discovery in this matter to prevent annoyance, embarrassment, oppression, or undue burden or expense.

Accordingly, **IT IS ORDERED:**

1. The parties' Stipulation for Entry of Protective Order, **ECF No. 29**, is **GRANTED.**

PROTECTIVE ORDER

A. Confidential Information

1. This Order does not confer blanket protection on all disclosures or discovery; the protection this Order affords extends only to the limited information or items that are entitled to be treated as confidential under the terms of this Order.

2. As used in this Protective Order, these terms have the following meanings:

- a. “Confidential Materials” are specific materials designated pursuant to Paragraph (3), regardless of the medium or manner generated, stored, or maintained (including, among other things, documents, testimony, transcripts, electronic files, or tangible things).
- b. “Documents” are all materials within the scope of Fed. R. Civ. P. 34.
- c. “Outside Vendors” means messenger, copy, coding, court reporting, transcription, e-discovery vendors, and other clerical-services, and vendors not directly employed by a party or its Attorneys.
- d. “Party” or “Parties” are Plaintiffs and Defendants, their officers, agents, employees, assigns, and attorneys of record.
- e. “Written Assurance” means an executed document indicating compliance with this order.

1 **3.** The Confidential Materials protected by this order include, but are not
2 limited to, any and all of Plaintiffs' medical, psychological and counseling records
3 produced or obtained; materials containing Defendants' financial information; and
4 materials containing the private personal information ("PPI") of Defendants'
5 current or past volunteers, cast members, employees, performers, and any other
6 similarly situated individuals. For purposes of this Paragraph, PPI refers to the
7 personnel files maintained by Defendants and the social security numbers, contact
8 information, and other such sensitive information of the Defendants' current or
9 past volunteers, cast members, employees, performers, and any other similarly
10 situated individuals.

11 **B. Access to And Designation of Confidential Material**

12 **4.** All Confidential Materials, along with the information contained in
13 the Confidential Materials, shall be used solely for the purpose of this action, and
14 no person receiving such materials shall, directly or indirectly, use, transfer,
15 disclose, or communicate in any way the materials or their contents to any person
16 other than those specified in Paragraph (5). Any other use is prohibited.

17 **5.** Access to Confidential Materials shall be limited to:

18 **a.** the Court and its staff, including use at trial before a jury;

19 **b.** the parties in this action, their law firms, and Outside Vendors;
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1 c. persons shown on the face of the document to have authored, produced,
2 or received it;

3 d. court reporters retained to transcribe testimony;

4 e. outside independent persons to furnish expert services for the purpose of
5 giving expert testimony in this action;

6 f. only upon stipulation of the parties, or order of the court, lay witnesses to
7 whom disclosure is reasonably necessary as part of their deposition or
8 trial testimony and the preparation thereof; provided, however, that a lay
9 witness authorized to have access to confidential materials must comply
10 with Paragraph (6) below; and

11 g. Outside Vendors as defined above.

12 6. Each person appropriately designated pursuant to Paragraph (5)(e),
13 (5)(f), or (5)(g) to receive Confidential Materials shall execute a “Written
14 Assurance” in the form contained at ECF No. 29-1 at 11 before being permitted to
15 receive and review such Confidential Materials.

16 7. A copy of this Protective Order shall be served along with any
17 subpoena or document request served on third parties in connection with this
18 action. All Confidential Materials produced, provided, or obtained consistent with
19 Paragraph (3), shall be treated as “Confidential” and shall be so designated
20 pursuant to Paragraph (8)(a) by the receiving party.

1 **8.** Disclosure or discovery of materials that qualify for protection under
2 this Order must be clearly designated before or when the material is disclosed or
3 produced, as follows:

4 **a.** Materials in documentary form: A party who is disclosing Plaintiffs'
5 medical, psychological and counseling records, or who designates other
6 records as confidential, must affix the word "CONFIDENTIAL" to each
7 page that contains Confidential Material.

8 **b.** Testimony in depositions or other proceedings: the parties and any
9 participating non-parties must identify on the record during the
10 deposition or other proceeding that the testimony contains confidential
11 information within the scope of this Order, and that it is to be designated
12 "Confidential" and thereby obtain the protections accorded other
13 "Confidential" materials. Confidentiality designations for depositions or
14 proceedings shall be made either on the record or by written notice to the
15 other party within 14 days of receipt of the transcript. Unless otherwise
16 agreed, depositions shall be treated as "Confidential" during the 14-day
17 period following receipt of the transcript.

18 **9.** Any party who inadvertently fails to identify Confidential Materials
19 as "Confidential" shall, promptly upon discovery of its oversight, provide written
20 notice of the error and substitute appropriately-designated documents. Any party

1 receiving such improperly-designated Confidential Materials shall retrieve such
2 Confidential materials from persons not entitled to receive those documents and,
3 upon receipt of the substitute documents, shall return or destroy the improperly-
4 designated Confidential Materials.

5 **10.** Any party may request a change in the designation of any material
6 designated “Confidential.” Any such material previously designated as
7 confidential shall be treated as confidential until the parties stipulate to such
8 change, or an amended order is entered changing the designation of the particular
9 materials. If the requested change in designation is not agreed to, the party
10 seeking the change may move the Court for appropriate relief, providing notice to
11 any third party whose designation of produced materials as “Confidential” in the
12 action may be affected.

13 **C. Protected Material Subpoenaed or Ordered Produced in Other**
14 **Litigation**

15 **11.** If a party is served with a subpoena or a court order issued in other
16 litigation that compels disclosure of any information or items designated in this
17 action as “CONFIDENTIAL,” that party must:

18 **a.** promptly notify the designating party in writing and include a copy of
19 the subpoena or court order;

20 **b.** promptly notify in writing the party who caused the subpoena or order to

1 issue in the other litigation that some or all of the material covered by
2 the subpoena or order is subject to this Order and provide a copy of this
3 order with such notification; and

4 c. cooperate with respect to all reasonable procedures sought to be pursued
5 by the designating party whose confidential material may be affected.

6 **D. Use Of Confidential Material**

7 **12.** Any and all sealed documents shall be filed by the parties under the
8 sealed event as a sealed document. The parties are not required to file a separate
9 motion to seal a document. The parties shall file any objections to a sealed
10 document by no later than five days after the filing of the sealed document. The
11 Court will thereafter review the sealed document and any objections filed to
12 determine whether the document should be unsealed. Any party filing a sealed
13 document shall email dimkeorders@waed.uscourts.gov to inform the Court of the
14 filing. The email shall note the ECF number of the sealed document and the
15 general nature of the document.

16 **13.** If Confidential Materials are attached to court filings, “compelling
17 reasons” must be shown to seal records attached to a dispositive motion and “good
18 cause” must be shown to seal records attached to a non-dispositive motion.
19 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir.
20 2006).

1 **14.** Within 60 days of the termination of this action, including any
2 appeals, each party shall either destroy, or return to the opposing party, all
3 documents designated by the opposing party as “Confidential,” and all copies of
4 such documents, and shall destroy all extracts and/or data taken from such
5 documents. Each party shall provide a certification as to such return or destruction
6 within the 60-day period. However, Attorneys shall be entitled to retain a set of all
7 documents filed with the Court and all correspondence generated in connection
8 with the action.

9 **E. Unauthorized Disclosure of Protected Material**

10 **15.** If a receiving party learns that, by inadvertence or otherwise, it has
11 disclosed confidential material to any person or in any circumstance not
12 authorized by this Order, the receiving party shall immediately:

- 13 **a.** notify in writing the designating party of the unauthorized disclosures,
 - 14 **b.** use its best efforts to retrieve all unauthorized copies of the protected
15 material,
 - 16 **c.** inform the person or persons to whom unauthorized disclosures were
17 made of all the terms of this agreement, and
 - 18 **d.** request that such person or persons execute the “Acknowledgment and
19 Agreement to Be Bound” that is contained at ECF No. 29-1 at 11.
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1 **F. Other Provisions**

2 **16.** Any party may apply to the Court for a modification of this Protective
3 Order, and nothing in this Protective Order shall be construed to prevent a party
4 from seeking such further provisions enhancing or limiting confidentiality as may
5 be appropriate.

6 **17.** No action taken in accordance with this Protective Order shall be
7 construed as a waiver of any claim or defense in the action or of any position as to
8 discoverability or admissibility of evidence.

9 **18.** The obligations imposed by this Protective Order shall survive the
10 termination of this action.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
12 Order and provide copies to the parties.

13 DATED November 2, 2023.

14 s/Mary K. Dimke
15 MARY K. DIMKE
16 UNITED STATES DISTRICT JUDGE
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